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No. 439

In the Supreme Court of the United States

OCTOBER TERM, 1960

CHARLES SACHS, PETITIONER

v.

UNITED STATES OF AMERICA

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The opinion of the Court of Appeals (Pet. App. 1-5) is reported at 281 F. 2d 189.

JURISDICTION

The judgment of the Court of Appeals was entered on July 11, 1960 (R. 612). A petition for rehearing was denied on August 29, 1960 (R. 633). The petition for a writ of certiorari was filed on September 24, 1960. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether the trial court erred in admitting, with cautionary instructions, evidence that petitioner had committed acts similar to, and during the period intervening between, the acts charged in the indictment.

STATEMENT

After a trial by jury in the United States District Court for the Southern District of California, petitioner was convicted on two counts charging the knowing receipt of phonograph records stolen from an interstate shipment, in violation of 18 U.S.C. 659. Petitioner was fined $5,000 on one count; on the other, imposition of sentence was suspended and petitioner was placed on probation for one year (R. 86). The judgment was affirmed on appeal (Pet. App. 1–5).

The counts on which petitioner was convicted charged purchases of stolen goods by petitioner on November 22, 1957, and February 4, 1958. The records were stolen from an interstate truck line by a driver who sold them to one Murray Berson (R. 183–186), who in turn sold them to petitioner at prices substantially lower than the usual wholesale price (R. 269–272).

The government showed that, between November 1957 and February 1958, Berson and petitioner dealt extensively in stolen records (R. 267–272, 275–279, 283, 321, 331). The judge during the trial instructed the jury that evidence of transactions other than those on the specific dates charged was admissible only of

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[1] A conspiracy count was dismissed during trial.

intent and not as tending to prove the allegations specifically charged in the two counts (R. 236, 268, 363). In his final charge, the judge instructed the jury (R. 588–589):

> Evidence has been introduced of other offenses, that is, alleged sales to the defendant of other goods alleged to have been stolen and which had been a part of an interstate shipment, than those charged in Counts Two and Three of the Indictment. These offenses are to be considered only insofar as they may bear upon the defendant's intent concerning the acts charged in the two counts of the indictment. And even before you can infer guilty intent from them, or any of them, you must be satisfied by evidence that is plain, clear and conclusive that these other acts were actually committed by the defendant.

ARGUMENT

Evidence of a course of dealing in stolen phonograph records between Berson and petitioner in the period between the two specific purchases charged in the two counts of the indictment was properly admitted for the limited purpose for which the judge allowed the jury to consider it—as bearing on petitioner's intent and knowledge with respect to the particular purchases which formed the basis of the charges. *See Nye & Nissen* v. *United States*, 336 U.S. 613, 618; *Grant* v. *United States*, 255 F. 2d 341 (C.A. 6), certiorari denied, 358 U.S. 828; *Harper* v. *United States*, 239 F. 2d 945, 946–947 (C.A. D.C.); *Abrams* v. *United States*, 265 F. 2d 514 (C.A. 5). The other

transactions proved were not remote but were part of a continuous course of dealing which included the specific purchases charged. There is no conflict of circuits on the admissibility of this type of evidence for such limited purpose. The admission of such evidence does not have the effect of varying or amending the indictment, as petitioner claims, since the evidence was admitted only for its relevant tendency to prove the particular crimes charged.

CONCLUSION

For the reasons stated, it is respectfully submitted that the petition should be denied.

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